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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,639	08/28/2003	Stanley E. Zambahlen	3-5612.4	5556

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EXAMINER

BATSON, VICTOR D

ART UNIT PAPER NUMBER

3671

DATE MAILED: 04/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/649,639

Applicant(s)

ZAMBAHLEN ET AL.

Examiner

Victor Batson

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1 line 11, "a flat concrete surface" lacks proper antecedent basis as antecedent basis has been established for "concrete surfaces" in claim 1 line 2 and it is unclear if applicant is referring to the established concrete surface or if applicant is attempting to establish antecedent basis for a different concrete surface. In claim 1 line 13, "a flat concrete" is not understood. In claim 5, "the wear strip members" lacks proper antecedent basis since antecedent basis has been established for a single "wear strip member" in claim 2. In claim 7 line 1, "the strut members" lacks proper antecedent basis. In claim 9 line 9, "an upper hitch" is not grammatically correct. In claim 11 line 2, "said transverse connecting bar" lacks proper antecedent basis.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,7,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Best of Farm Show '89 in view of Gruner (1,088,414).

Best of Farm Show '89 discloses a generally semicircular shaped scraping blade as viewed in plan having forwardly disposed end sections, with a crossbeam having spaced lower three-point hitch connections and a support tower including an upper three-point hitch connection including rigid strut means extending downwardly and rearwardly from the support tower and secured to an upper portion of the blade. Best of Farm Show '89 however lacks the blade being perpendicular throughout its length to the surface being scraped, and lacks the blade being metal.

Gruner teaches that it is known in the agricultural art to form a scraping blade such that it is perpendicular throughout its length. It is noted that Gruner further teaches that the blade can be constructed of metal.

Therefore, Gruner shows that a semi-circular, metal, perpendicular scraper blade is an equivalent structure known in the art. Therefore, because these two scraper blades were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the scraper blade of Gruner for the scraper blade of Best of Farm Show '89.

Art Unit: 3671

2. Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Best of Farm Show '89 in view of Gruner (1,088,414) as applied to claims 1,7,9 above, and further in view of Akers (1,054,483).

Best of Farm Show '89 as modified by Gruner, discloses a scraper blade as described previously, but lacks using a wear strip.

Akers et al. teaches that it is old and well known in the art to use a continuous wear strip 3 having a flat lower sliding surface with a scraping blade as shown in figure 4. The use of a wear strip with a scraping blade is notoriously old and well known in the art as it extends the life of the scraper blade. Concerning claim 6, Akers et al. appears to show the wear strip 3 being bolted to the blade.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a wear strip similar to that of Akers et al. with the scraper blade of Gruner, to extend the life of the scraper blade.

Concerning claims 3 & 4, it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the wear strip out of metal or polyurethane, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

3. Claims 1,7-11 are rejected under 35 U.S.C. 103 as being unpatentable over Gruner (1,088,414) in view of McGee (3,034,238).

Gruner discloses a scraper comprising a generally semicircular shaped metal scraping blade being of uniform thickness metal and having a lower scraping portion provided with a continuous flat metal surface, with the lower scraping portion being configured to be perpendicular throughout its length to a scraping surface.

McGee discloses a three-point hitch means including a crossbeam 22 connected to the forwardly disposed end sections 20, and rigid strut means 78 extending downwardly and rearwardly from a support tower that are secured to an upper portion of the blade. McGee further discloses a support tower using a pair of laterally spaced upright members connected at their upper ends to a transverse connecting bar (shown in figure 1 between members 76 & 75). The crossbeam, strut means and support tower with connecting bar add rigidity to the overall blade structure, and inherently limits overflow of debris from the scraper.

Gruner discloses the claimed invention except that a chain type hitching structure instead of a hitch tower with cross beam type hitching structure was used. McGee shows that a hitch tower with cross beam type hitching structure is an equivalent structure known in the art. Therefore, because these two hitching means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute a hitch tower with cross beam type hitch means for a chain type hitch means.

It is noted that the limitation in claim 9 of a "non-hardened hot rolled soft tempered mild steel scraping blade" is a product-by-process limitation.

Therefore, claim 9 is considered to be a product-by-process claim, and the

Art Unit: 3671

examiner notes that it has been held that even though product - by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. Additionally, the patentability of a product does not depend on its method of production. If the product in the product - by - process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985){see MPEP 2113}.

4. Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gruner (1,088,414) in view of McGee (3,034,238) as applied to claims 1,7,8,9-11 above, and further in view of Akers (1,054,483).

Gruner as modified by McGee, discloses a scraper blade as described previously, but lacks using a wear strip.

Akers et al. teaches that it is old and well known in the art to use a continuous wear strip 3 having a flat lower sliding surface with a scraping blade as shown in figure 4. The use of a wear strip with a scraping blade is notoriously old and well known in the art as it extends the life of the scraper blade. Concerning claims 5 & 6, Akers et al. appears to show the wear strip 3 being bolted to the blade.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a wear strip similar to that of Akers et al. with the scraper blade of Gruner, to extend the life of the scraper blade.

Art Unit: 3671

It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the wear strip out of metal or polyurethane, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

5. Claims 1-7,9 are rejected under 35 U.S.C. 103 as being unpatentable over Best of Farm Show '89 in view of Akers et al. (1,054,483).

Best of Farm Show '89 discloses generally semicircular shaped scraping blade as viewed in plan having forwardly disposed end sections, with a crossbeam having spaced lower three-point hitch connections and a support tower including an upper three-point hitch connection including rigid strut means extending downwardly and rearwardly from the support tower and secured to an upper portion of the blade. Best of Farm Show '89 however lacks the blade being perpendicular throughout its length to the surface being scraped, and lacks the blade being metal.

Akers et al. teaches that it is known in the agricultural art to form a scraping blade such that it is perpendicular throughout its length. It is noted that Akers et al. further teaches that the blade can be constructed of any suitable material. Concerning claim 2, Akers et al. teaches that it is known to use a continuous wear strip 3 having a flat lower sliding surface as shown in figure 4. Concerning claims 5 & 6, Akers et al. appears to show the wear strip 3 being bolted to the blade 1.



It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the blade out of metal and the wear strip out of metal or polyurethane, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

6. Claims 8,10,11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Best of Farm Show '89 in view of Akers et al. (1,054,483) as applied to claims 1,2,3,4,5,6,7,9 above, and further in view of McGee (3,034,238).

Best of Farm Show '89 as modified by Akers et al. discloses a device as described previously, but lacks the three-point hitch connections including a support tower having laterally spaced upright members connected at their upper ends by a ***transverse connecting bar***.

McGee discloses a three-point hitch connection as described previously including a support tower having laterally spaced upright members connected at their upper ends by a transverse connecting bar.

Best of Farm Show '89 as modified by Akers et al. discloses the claimed invention except that the hitching structure of Best of Farm Show '89 lacks the laterally spaced upright members being connected at their upper ends by a transverse connecting bar. McGee shows that a hitching means with a hitch tower having a transverse connecting bar is an equivalent structure known in the

Art Unit: 3671

art. Therefore, because these two hitching means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the hitch means of McGee for the hitch means of Best of Farm Show '89.

### ***Claim Rejections – Res Judicata***

Claims 1,2,5,7-11 are rejected on the ground of *Res Judicata* for reasons set forth regarding claims 14,15,18-23 in the Decision on Appeal regarding parent application 08/504,488, mailed on July 29, 2003. The functional limitations of present claims 1,2,5,7-11 are not deemed to be materially different than that of the claims on which a previous decision by the Board of Patent Appeals and Interferences was made affirming the rejection of the claims.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The examiner notes that Vickers (6,564,479) teaches forming wear strips out of polyurethane (column 2 lines 10-14).

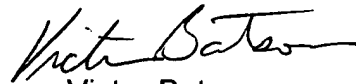
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Batson whose telephone number is (571) 272-6987. The examiner can normally be reached on Monday through Friday (except Wednesday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3671

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 19, 2005

  
Victor Batson  
Primary Examiner  
Art Unit 3671